

TITLE X
PUBLIC HEALTH

CHAPTER 125-C
AIR POLLUTION CONTROL

Section 125-C:6-a

125-C:6-a Enhanced Environmental Performance Agreements. –

I. It is the purpose of this section to create a voluntary pilot program by which the commissioner of environmental services may enter into enhanced environmental performance agreements (EEPAs) with persons regulated under this chapter to implement innovative environmental measures not otherwise recognized or allowed under existing laws and rules of this state, if those measures achieve emissions reductions or reductions in discharges or wastes which equal or exceed those required under applicable statutes and rules, and to test innovative strategies for achieving enhanced environmental results. Approaches embodied in EEPAs should typically represent, favor, or promote pollution prevention, source reduction, environmental innovation, and transferability to other applicable entities, without increasing the overall level of pollution emitted directly or indirectly to the air, water, and land.

II. After notice and opportunity for public comment and hearing, the commissioner may enter into enhanced environmental performance agreements with any person regulated under any or all of RSA 125-C, RSA 125-D, RSA 125-I, or RSA 125-J to implement innovative environmental measures that relate to provisions of these chapters, even if one or more of the terms of such an agreement would be inconsistent with an otherwise applicable statute or rule of this state. Participation in this program is limited to those persons who have submitted an enhanced environmental performance agreement that is acceptable to the commissioner. A decision by the commissioner to not enter into an agreement with any person is not appealable.

III. An enhanced environmental performance agreement shall operate in lieu of existing permits identified in the agreement. Any environmental statute, regulation, or condition in an existing permit that differs from a term or condition in an agreement shall cease to apply from the effective date of an initial or renewed agreement until the agreement is terminated or expires.

IV. Persons applying to the commissioner for enhanced environmental performance agreements shall, at a minimum:

(a) Submit a description of how the proposal is consistent with the purpose of this section and federal guidelines, and a comprehensive description of the proposed EEPA which includes the nature of the facility, the operations which will be affected, how such operations will be altered to achieve superior emissions reductions, and the extent of emissions reduction anticipated.

(b) Include in EEPA proposals the following, without limitation:

(1) Identification of all state and federal statutes, rules and regulations applicable to the source.

(2) Identification of all statutes, rules and regulations that are inconsistent with one or more terms of the proposed agreement.

(3) A statement describing how the proposed agreement will achieve the purposes of this section.

(4) A statement describing the implementation of the proposed agreement, including a list of steps and schedule.

Implementation of the proposed agreement shall not increase overall worker safety risks or create undue risk burdens on others.

(5) Identification of those members of the general public, representatives of local communities, environmental groups, and other appropriate parties who have participated in the development of the proposed agreement or who have an interest in the agreement.

(6) Identification of how the applicant will demonstrate ongoing satisfaction of the requirements of the agreement, including but not limited to, mechanisms for performance assurance and the type of performance guarantees to be provided, which guarantees shall be directly related to the complexity of, and risk associated with, the proposal.

(7) A description of and plan for public participation in the EEPA.

(8) A schedule for review by the commissioner of the performance of the proposed EEPA.

(9) Provisions for voluntary and involuntary termination of the agreement.

V. Without limiting the commissioner's authority under this section to specify additional criteria, the commissioner may adopt rules, under RSA 541-A, specifying criteria for acceptance of proposed enhanced environmental performance agreements.

VI. In the event of deficient performance of any term or condition in the agreement, the commissioner may, with written notice, terminate any agreement, and the participant shall then be subject to enforcement under the applicable chapter. The commissioner's decision to terminate an agreement is not appealable. If an agreement is terminated, the participant shall have 30 days to apply for any necessary permits concerning operations that were in effect during the course of the agreement.

VII. Nothing in this section shall limit the authority or the ability of the attorney general to initiate enforcement action against a person for violation of any laws of this state or rules adopted under such laws, except that an enhanced environmental performance agreement shall be deemed to be a permit to engage in activities authorized under the agreement.

VIII. Nothing in this section shall reduce, eliminate, or in any way affect any fees that a participant in this program may be required to pay under any federal or state law. Applicants for participation in the enhanced environmental performance agreements program shall pay all costs associated with public notice and hearings.

Source. 1996, 230:1, eff. July 1, 1996. 1998, 229:2, eff. Aug. 23, 1998.